

**REMARKS**

Claims 1-50 were originally filed in this application. In response to the Restriction Requirement dated October 3, 2001, Applicants elected Group II claims drawn to methods of producing virus, corresponding to claims 19-21 and 27-33. Claims 22-26 were amended to correctly read as method claims of Group II in the Response filed on January 23, 2002. Claims 51-55 were added in the Amendment and Response, mailed January 3, 2002, to the Restriction Requirement dated October 3, 2001. Claims 51-55 were initially withdrawn from consideration for being drawn to a non-elected invention, but were rejoined in the petition decision dated May 28, 2003. Claim 56 was added in the response mailed June 26, 2002. Claims 1-18, 22-26, and 34-50 have been canceled. Claims 19-21, 27-33 and 51-56 are currently pending.

The Office communication dated June 3, 2005 states that Applicants response dated March 30, 2005 was non-responsive to the action dated January 28, 2005. The action dated January 28, 2005 alleged that claims 1-17, 19-46, 48, 49 and 51-56 of the pending application may potentially interfere with the claims 1-24 of U.S. Patent 6,627,437 ('437 patent) under 35 U.S.C. §135(a). Applicants respectfully disagree with both the action dated January 28, 2005 and the present action dated June 3, 2005 in regard to the potential 35 U.S.C. §135(a) interference claim because there would be no interference in fact between the current pending claims and the issued claims of the '437 patent. The application and the issued patent do not claim the same patentable invention.

As defined in C.F.R. §1.601(i), "An interference is a proceeding instituted in the Patent and Trademark Office before the Board to determine any question of patentability and priority of invention between two or more parties *claiming the same patentable invention.*" (emphasis added) In addition, C.F.R. §1.601(j) states "An interference-in-fact exists when at least one *claim* of a party that is designated to correspond to a count and at least one *claim* of an opponent

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that is designated to correspond to the count *define the same patentable invention.*" (emphasis added) The pending claims of the present application and the issued claims of the '437 patent are distinct and not drawn to the same patentable invention. Applicants submit that any potential interfering subject matter was subject to a restriction requirement in the action mailed October 3, 2001. Applicants subsequently elected the claims of Group II drawn to methods of producing virus. Applicants did not elect the claims of Group I, which were characterized by the restriction requirement as drawn to polynucleotides and constructs. Those claims have been canceled. Claims 1-24 of the '437 patent are directed to "isolated polynucleotides," "vectors," and "host cells." According to the restriction requirement in the current case, these claims are separately patentable from the elected claims of Group II pending in the present application. Thus, the present application does not contain claims defining the same invention claimed in the '437 patent.

Claims 19-21, 27-33 and 51-56 are currently pending. They are directed to subject matter that is patentably distinct from the '437 patent and are in condition for allowance. Applicant respectfully request reconsideration and allowance of the pending claims. The Examiner is invited to contact the undersigned agent at 713-651-5391 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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Attachment: Copy of Office Action dated June 3, 2005

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